

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM        )  
2.59.104 pertaining to the semiannual        )  
assessment of banks                                )

NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 4, 2007, the Department of Administration, Division of Banking and Financial Institutions, published MAR Notice No. 2-59-389 regarding the public hearing on the proposed amendment of the above-stated rule at page 1493 of the 2007 Montana Administrative Register, issue number 19.

2. A public hearing was held on October 25, 2007. No testimony was received; however, two written comments were received by the November 2, 2007, deadline.

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Senator Carolyn Squires commented on MAR Notice No. 2-59-389 pertaining to the semiannual assessment of banks and MAR Notice No. 2-59-390 pertaining to credit union supervisory and examination fees. Her comment compared fees paid to the division by state-chartered banks, state-chartered credit unions, and consumer loan licensees. Senator Squires stated that there are 64 state-chartered banks and 11 state-chartered credit unions in Montana. The two-year cost to the average-sized, state-chartered bank (regulatory fee) is \$25,110. The two-year cost to the average-sized, state-chartered credit union (both regulatory and examination fee not including hourly charges) is \$44,782. The two-year cost to the average-sized, state-chartered credit union excluding the state's largest credit union (both regulatory fee and examination fee not including hourly charges) is \$27,675. There are 280 consumer loan licensees in Montana. Per ARM 2.59.308 consumer loan companies are charged \$300 per day for each examiner with no specified time expectations. To meet the average state-chartered bank's exam/regulatory fee it would take two examiners 42 days in examining a consumer loan licensee to meet the same fees. State-chartered credit unions pay an annual fee, a regular exam fee, and hourly exam fees but state-chartered banks do not pay an annual fee or hourly fee. That hourly fee alone has a proposed 150% increase. There does seem to be a level of inequality in the administration fees for regulation and examination of our state's many financial service providers.

RESPONSE #1: It is not possible to do a straight-across comparison of fees paid by banks, credit unions, and consumer loan licensees. Each program is governed by different laws. Each program has different staff that fulfills different functions. Because there are 64 state-chartered banks and 11 state-chartered credit unions, the department has more personnel to examine banks than credit unions. Unlike the

bank and credit union programs, the consumer loan program has licensing personnel.

Banks are charged a semiannual assessment pursuant to 32-1-213, MCA. That section requires the department to recover all costs of administering the program for the supervision of banks.

Credit unions are charged a supervisory fee pursuant to 32-3-201(2), MCA. In addition, when credit unions are examined they are charged an examination fee based on their size and a flat rate (\$25) per hour per examiner. The fees received from credit unions are used to recover the cost of the credit union program.

Consumer loan licensees are charged an annual licensee fee pursuant to 32-5-201, MCA. They are also charged an examination fee pursuant to 32-5-403, MCA. That examination fee is established by rule. The old rule set the examination fee at \$300 per day per examiner. The new proposed rule would set at a rate equal to actual examiner wages and travel expenses. The consumer loan license program requires licensing personnel in addition to examiners. The fees received from consumer loan licensees are used to recover the cost of the consumer loan program. Even though a straight-across comparison is not possible, in all areas, the department endeavors to set the fees at a fair level given the cost of the program and the size of the institution being regulated.

COMMENT #2: Steve Turkiewicz, President and CEO of the Montana Bankers Association, stated that the Montana Bankers Association offers its support for the increase in the semiannual bank assessments contained in the proposed amendments to ARM 2.59.104. He stated that regulation by experienced, well-trained, and professional certified examiners is necessary to assure Montana citizens that state-chartered banks are being managed in a prudent, safe, and sound manner. The Montana Bankers Association recognizes that the costs of recruitment, training, and retention of examiners continue to rise as do the division's administrative costs. He stated that it is appropriate for the semiannual bank assessment to increase to keep pace with the cost of regulating Montana banks.

RESPONSE #2: The division thanks the Montana Bankers Association for their support.

4. The department has amended ARM 2.59.104 exactly as proposed.

By: /s/ Janet R. Kelly  
Janet R. Kelly, Director  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer  
Department of Administration

Certified to the Secretary of State November 13, 2007.